different rulings on the different state regulations and the different state courts' interpretation of the common law, we will have a divided authority which may only be defeated by the federal courts having the exclusive jurisdiction. *Kansas City Southern Railway Company* v. *Carl,* supra. As to the question when a suit may be said to "arise under" a law of the United States, besides those cases cited in the principal case, see *Ogden* v. *Bank,* 9 Wheat. 822; *Pacific Railroad Removal Cases,* 115 U. S. 2; *Mitchell* v. *Smale,* 140 U. S. 406.

The practical effect of the principal case is to allow a removal to federal courts of *all cases* against common carriers upon a cause of action for injury to property while in interstate commerce, and indeed if the doctrine of the principal case is not correct, or not accepted, the alternative must be that final decisions upon questions of federal law must be left to the courts of the several states, and this multitude of courts of final jurisdiction of the same causes arising upon the same laws, would, in the language of the Federalist, be a hydra in government, from which nothing but contradiction and confusion could proceed. *Federalist,* No. 80. W. W. M.

NATURE OF THE RIGHT TO A PUBLIC OFFICE AND THE USE OF INJUNCTION TO TRY THAT RIGHT.—The length to which some courts will go in attempting to abolish all distinctions between the different forms of action, in accordance with what is considered to be the spirit of the modern Codes of Civil Procedure, is well illustrated by a case recently decided by the Supreme Court of Wisconsin. A statute in Wisconsin provides that certain officers who are appointed by the Governor, by and with the consent of the Senate "May, for official misconduct, or habitual or wilful neglect of duty, be removed by the Governor upon satisfactory proofs, at any time during the recess of the legislature, and the vacancy filled by him until such vacancy shall be regularly supplied." § 970, WIS. STATUTES. In *Ekern* v. *McGovern,* (Wis. 1913), 142 N. W. 595, the complainant was the regularly appointed incumbent of the office of Insurance Commissioner, which said office was appointive within the provisions of the above mentioned statute. His term still had about three years to run when a factional struggle arose with reference to the office of speaker of the state assembly. Complainant, having openly indicated his preference for a candidate who was opposed by the Governor, was removed by the latter on the ground that he had served on a campaign committee contrary to the statute creating the office which he occupied. Apparently in order to get complainant out of the way before his power of removal should be lost by the coming together of the assembly which was to convene the next day, the Governor removed him summarily, giving him practically no opportunity to defend himself against the charges presented. Complainant, maintaining that he had been unlawfully ousted, refused to give up the office to his duly appointed successor whereupon the Governor and his friends threatened to seize the office by force. Complainant then applied for an injunction to prevent his forcible dispossession. A temporary injunction was granted and on appeal it was held by a divided

court (1) That the right to a public office, although not a vested property right in the ordinary sense of the term, is property in that broad sense which includes everything of pecuniary value, and comes within the protection of that clause of the constitution which provides that no one shall be deprived of life, liberty, or property without due process of law. (2) That the title to a public office may be determined in an equitable proceeding for an injunction where that determination is necessary to settle the whole controversy, provided the primary purpose in bringing the proceedings is not to try title, but to protect an officer de facto who in good faith claims the right to hold possession, in the exercise of the functions of that office pending the determination of the title de jure.

It seems the court in its decision has gone counter to the generally accepted doctrines with reference to the title to public office and the remedies available to establish that title. It needs no citation of authority for the principle that a public office is not property within the ordinary meaning of that term. The court of only one state in this country, viz. North Carolina, has ever affirmed such a doctrine and it has since reversed itself. *Mial* v. *Ellington,* 134 N. C. 131. That it is not property within the purview of the "due process of law" clause of the constitution, has not always been so definitely asserted. In a series of cases decided by the Supreme Court of the United States wherein the direct question involved was one of jurisdiction, the court intimated that the right to a public office did come within the protection of that clause. *Kennard* v. *Louisiana,* 92 U. S. 480; *Foster* v. *Kansas,* 112 U. S. 201; *Wilson* v. *North Carolina,* 169 U. S. 586. The first time that the question was squarely presented to the court was in *Taylor* v. *Beckham,* 178 U. S. 548. In that case the question was whether the court had the right to go behind the determination of the state assembly of Kentucky in regard to the right of one claiming the office of governor, and say whether or not he had been rightfully removed, where the determination of that question had been entrusted to the General Assembly. The court (HARLAN and BREWER dissenting) held it could not, saying, "The nature of the relation of a public officer to the public is inconsistent with either a property or a contract right. It is clear that the court of appeals in declining to go behind the decision of the tribunal vested by the state constitution and laws with the ultimate determination of the right to office, denied no right secured by the 14th amendment." Other cases supporting this view are, *State* v. *Grant,* 14 Wyo. 41; *Rich* v. *Jochim,* 99 Mich. 358; *Taylor* v. *Beckham,* 21 Ky. L. Rep. 1735. It is submitted that the view taken by the Supreme Court of the United States in *Taylor* v. *Beckham,* supra, best subserves the interests of the public. It does not seem consistent with the spirit of our democratic institutions to regard a public office as in any sense the property of the incumbent. An office is in the nature of a public trust and it does not seem wise to make it difficult to bring about the removal of those who are not fulfilling that trust, by entrenching them behind the bulwark of a property right.

On the proposition that the title de jure to a public office can be determined incidentally in an equitable action where the court once has juris-

diction of the parties for the purpose of granting an injunction, the court in the principal case seems also to have arrived at its conclusion without following either precedent or authority. The court concedes that an action in equity will not lie for the primary purpose of trying title to an office, and this is the universal rule. *People* v. *Draper,* 24 Barb. 265; *Moulton* v. *Reid,* 54 Ala. 320; *Beebe* v. *Robinson,* 52 Ala. 66; *Neeland* v. *State,* 39 Kans. 154. It relies for its conclusion on the principle of equity jurisprudence that where a court once has jurisdiction of the parties and the primary subject-matter, it may proceed to settle the whole controversy. The general doctrine stated by the court is well established but the authorities deny its application to this kind of a case owing to the nature of the right to a public office. The right to public office being political in its nature it does not come within the cognizance of a court of equity whose jurisdiction is limited to questions involving property rights. 5 POMEROY, EQUITY JURISPRUDENCE, § 324. What is regarded as the better view in such cases is stated in HIGH, INJUNCTIONS in this language, "The actual incumbents of an office may be protected pending a contest as to their title, from interference with their possession, and with the exercise of their functions—and the granting of an injunction in such cases in no manner determines the questions of title involved, but merely goes to the protection of the present incumbent against the interference of claimants out of possession and whose title is not yet established." Vol. 2, Sec. 1315 (Third Ed.tion). This view is supported by authority. *State* v. *Superior Court,* 61 Wash. 893; *Barendt* v. *McCarthy,* 160 Cal. 680; *In re Sawyer,* 124 U. S. 200; *Blain* v. *Chippewa Circuit Judge,* 145 Mich. 59; *Guillotte* v. *Poincy,* 41 La. Ann. 333; *Goldman* v. *Gillespie,* 43 La. Ann. 83; *Hartt* v. *Harvey,* 32 Barb. 55; *Delahanty* v. *Warner,* 75 Ill. 185; *Sullivan* v. *Haacke,* 5 Oh. N. P. 26; *Brady* v. *Sweetland,* 13 Kans. 41; *Reemelin* v. *Mosby,* 47 Oh. St. 570. In *Scott* v. *Sheehan,* 145 Cal. 691, where the facts were practically identical with those in the principal case, the court in granting the injunction said, "It is of course well settled that in an action such as this, the title to the office is not involved and cannot be inquired into." In *Sullivan* v. *Haacke,* supra, the mayor of Cincinnati made an order removing a member of the board of supervisors, and appointing another to succeed him for the unexpired term. The court in granting a temporary injunction to the one in office to prevent his forcible dispossession pending the trial of his right de jure said, "The question of title to public office can not be tried in a proceeding in injunction, but can only be determined in a strict action at law." See to the same effect *Haffran* v. *Hutchins,* 160 Ill. 550 and *White* v. *Berry,* 171 U. S. 377. The court in the principal case justifies its decision on the broad ground that the ruling is in harmony with the spirit of the code which seeks to do away with the technical distinctions between the different forms of action.

The question as to whether it is wise to allow the determination of a purely legal proposition in an equitable action such as this, is not without difficulty, and the court which is confronted with it is placed in a dilemma.

If it refuses to settle the entire controversy when the parties are properly before it the court subjects itself to public criticism on the ground that its decision is over-technical. On the other hand if it does determine the matter a precedent is furnished which in some controversy of a different nature may result in depriving a litigant of some substantial right. G. C. G.

REMOVING A CLOUD ON TITLE TO PERSONALTY.—The jurisdiction of a court of equity to remove a cloud upon title in the case of real property is founded on the inadequacy of the remedy at law, and does not arise when the plaintiff has an adequate and complete remedy at law. *Munson* v. *Munson,* 28 Conn. 582, 73 Am. Dec. 693. This limitation on the right to maintain such an action must be kept in mind in a discussion of the right to bring a similar action in the case of personal property.

In the case of the *Central Savings Bank & Trust Co. et al.,* v. *Amalgamated Society of Carpenters and Joiners,* (Colo. App. 1913), 134 Pac. 1007, the plaintiffs had deposited a sum of money with the defendant, against which sum certain officers of the plaintiff society were empowered to draw checks. Later a split occurred in the plaintiff society which resulted in the withdrawing of a number of the members, among them being the officers who originally made the deposit. A dispute arose as to which set of members was entitled to the money, and the bank refused to honor any checks, or to pay over the money. Thereupon the Amalgamated Society brought an action to quiet title to the funds in the bank. In refusing relief, the court lays down the general rule that ordinarily an action to quiet title to personal property will not lie; and says that the few cases where the right to maintain the action has been upheld have all been of such a nature that the plaintiff had no sufficient or adequate legal remedy.

None of the cases cited by the court in support of the general rule laid down, are in point. In the case of *Fudikar* v. *East Riverside Co.,* 109 Cal. 29, 41 Pac. 1024, the property in question was held to be real property, and the remedy was refused because of defective pleadings. The case of *Red Diamond Clothing Co.* v. *Steidemann,* 120 Mo. App. 525, 97 S. W. 220, held that the action would not lie in the case of personal property in the possession of the plaintiff; but the cloud, to remove which the suit was brought, was a mere verbal claim by the defendants, and so not properly a cloud at all. In *State ex rel* v. *Wood,* 155 Mo. 425, 56 S. W. 474, 48 L. R. A. 596, there was a statement to the effect that such an action would not lie in the case of personal property, but the statement was mere dictum; for the court goes on to say that the bill showed on its face that the so-called cloud was made a personal charge against the plaintiff and not against his property.

There seems to be no doubt that the courts of a number of states think that the general rule is the one mentioned in the principal case; and in nearly every case where the right has been denied, will be found *dicta* to the effect that the action will not lie in the case of personal property. Yet we have been unable to find a single case where the court has denied the right *merely on the ground that the property in question was personal property.*